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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

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Date:

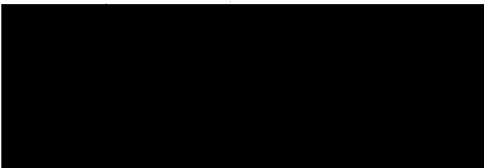
File: WAC 99 062 50593 Office: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN BEHALF OF PETITIONER:



**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The director's decision to deny the petition was affirmed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be dismissed.

The petitioner is engaged in the export of wastepaper, raw materials, and other goods to China. It seeks to employ the beneficiary in the United States as its president. Accordingly, the petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established a qualifying relationship with a foreign entity. The director also determined that the petitioner had not established that the beneficiary had been employed in a managerial or executive capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States as a non-immigrant. The director further determined that the petitioner had not established that the beneficiary had been or would be employed in a managerial or executive capacity for the United States entity. The director finally determined that the petitioner had not established that it had been doing business for one year prior to the filing of the petition. The Associate Commissioner found that the petitioner had overcome the director's determination on the issue of the petitioner's qualifying relationship but affirmed the remaining determinations on appeal.

On motion, counsel asserts that "the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information/evidence provided or with precedent decisions."

8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Although counsel has stated that the law was inappropriately applied or that an improper analysis was used in reaching the decision, counsel does not point with specificity to any error by the Associate Commissioner. Counsel re-states the claimed facts of the case and asserts that the beneficiary is eligible for this classification.

For example, counsel asserts that, because the beneficiary is in charge of the petitioner, the beneficiary qualifies as an executive. Counsel also asserts that, because the beneficiary manages the petitioning organization, the beneficiary meets the first criteria found in the definition of manager. Counsel further maintains that the beneficiary does not conduct first-level managerial duties. Counsel finally asserts that the petitioner was in the position of plant manager for the overseas company and that the foreign entity would not reasonably send such an individual to a lower level position in the United States. These assertions are not persuasive. First, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 BIA 1980). Second, these assertions do not address the deficiencies in the record pointed out previously by the Administrative Appeals Office. The petitioner has not provided a comprehensive description of the beneficiary's duties for either the foreign entity or the United States petitioner.

The Service recognizes the petitioner's dilemma in that the petitioner did not adequately respond to the director's request for this information and did not further respond to the deficiencies in the record on appeal; however, this error cannot be rectified on motion. As noted above, a motion to reconsider a decision on an application or petition must, when filed, establish that the decision was incorrect based on the evidence of record at the time of the initial decision. See 8 C.F.R. § 103.5(a)(2). Moreover, the information on motion regarding the petitioner's employees in the United States remains general in nature. The Service cannot determine that the majority of the beneficiary's duties relate to operational or policy management, and not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company. For instance, the petitioner has not explained who in its organization is responsible for finding the product it exports.

Finally, it should be noted for the record that, unless the Service directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed.